RETNARASA ANNARASA

v.

PP

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED APANDI ALI J
[CRIMINAL APPLICATION NO: 44-62-2007]
20 FEBRUARY 2008

CRIMINAL PROCEDURE: *Disclosure of information - Documents - Post-mortem report - Principles applicable - Power and jurisdiction of Magistrates - Practice Direction No. 1 of 2007 - Criminal Procedure Code, ss. 51, 51A - Subordinate Courts Act 1948, s. 99A*

CRIMINAL PROCEDURE: *Jurisdiction of court - Magistrate's Court - Whether Magistrates have power to order discovery of facts or documents by any party or person - Subordinate Courts Act 1948, s. 99A*

In an inquest proceeding at the Magistrate's Court, the applicant, the husband of the deceased, orally applied to the Magistrate holding the inquest for the reports (post-mortem report and all other medical reports) to be supplied. The Magistrate refused, ordering that access to the reports only be given after the relevant medical witnesses had given evidence. In this motion, the applicant sought the following: (i) that the order of the Magistrate be set aside; and (ii) that the applicant be supplied with a copy of the post-mortem report and all other medical reports of the deceased. The applicant subsequently amended the application, limiting it to the supply of the post-mortem report only.

Held (order in terms in respect of prayers in the motion, but with a varying order that it be limited to the post-mortem of the deceased only):

(1) This motion was basically an application for disclosure of documents, and the position in law on this issue and subject-matter is governed by two provisions of the law, namely: (a) Practice Direction No. 1 of 2007 ('Practice Direction'), with the heading "Guidelines on Inquest"; and (b) s. 51A of the Criminal Procedure Code ('CPC'). From the wordings under the heading "Disclosure of Documents" of the Practice Direction, the general rule is to release the documents; not releasing the documents will be an exception. That being so, any refusal to release or disclose must be justified with reasons

for such a refusal. Section 51A of the CPC has to be read, not in isolation, but together with s. 51 of the CPC. Section 51 of the CPC clearly states "… production of property or document is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceedings under this Code …". It, therefore, encompasses an "enquiry" or inquest. Even though s. 51A of the CPC speaks of "the trial", it should not be limited to trials only. After all, an inquest is inquisitorial in nature as compared to a trial, which is adversarial. If pre-trial discovery is allowed in an adversarial proceeding, there is no reason not to allow such discovery in an inquisitorial proceeding. There is no question of prejudice or embarrassment and to not allow it will be prejudicial to the right to know the truth. Furthermore, Magistrates do have the power to order discovery of facts or documents by any party or person. This is provided for under the provision of further powers, as can be seen in s. 99A of the Subordinate Courts Act 1948 ('Act'), which is amplified in para. 7 of the 3rd Schedule of the Act. Therefore, allowing the disclosure of the post-mortem report of the deceased to the applicant either before or during the inquest was well within the provisions of the law. (paras 3, 6, 7, 9, 10, 11, 12 & 13)

Case(s) referred to:
Mohammed Musa v. DPP [1971] 1 LNS 86 HC ***(refd)***
PP v. Raymond Chia Kim Chwee & Anor & Another Case [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 35
Criminal Procedure Code, ss. 51, 51A
Subordinate Courts Act 1948, ss. 4, 59(4), 76(3), 99A, 3rd sch, para 7

For the applicant - Dato' V Sithambaram (C Ghanendran with him); M/s Sitham & Assoc
For the prosecution - Shamsul Sulaiman DPP

Reported by Suresh Nathan

JUDGMENT

Mohamed Apandi Ali J:

[1] This is a notice of motion by the applicant arising from an inquest proceeding at the Magistrate's Court. Applicant is the husband of the deceased. In the course of the inquest proceeding counsel for the applicant made an oral application to the

Magistrate who was holding the inquest; for the reports (ie post-mortem reports and other medical reports) to be supplied. Magistrate refused and in the order only allowed access to the reports be given after the relevant medical witnesses has given evidence. In the motion (notice usul) – KM2, applicant is asking for:

(i) The order not to have access to the post-mortem report and other medical reports until after medical witnesses have given evidence, be set aside; and

(ii) That applicant to be supplied with a copy of the post-mortem report and all other medical reports of the deceased.

[2] All parties have filed written submissions on this matter. Counsel for applicant, in his submission-in-reply has now watered down the application, and limiting it to the supply of the post-mortem report only.

[3] Basically this motion is an application for disclosure of documents. The position in law on this issue and subject-matter is governed by two provisions of the law, namely:

(1) Practice Direction No. 1 of 2007, with the heading "GUIDELINES ON INQUEST"; and

(2) Section 51A of the Criminal Procedure Code.

(1) Practice Direction No. 1 of 2007

[4] This Practice Direction is dated 5 January 2007 and is so worded that it "shall be followed ..." with effect from 1 February 2007. It was issued by the then Chief Judge of Malaya, Tan Sri Dato' Siti Norma bt Yaakob. It is therefore imperative for Magistrates to abide by the direction.

[5] To remove any doubt, I must note Practice Directions issued by the Chief Judge of Malaya do have the force of law. This is so because the Chief Judge (meaning Chief Judge of Malaya for Peninsular Malaysia and Chief Judge for Sabah & Sarawak) do have supervisory powers over the Subordinate Courts. This can be seen in s. 4; s. 59(4) and s. 76(3) Subordinate Courts Act 1948 and of which such powers has to be read with s. 35 of the Courts of Judicature Act 1964.

[6] Now let us have a closer look at Practice Direction No. 1/2007. It comprises a very comprehensive guideline for Magistrates to follow in an inquest. The relevant provision is para

D under the heading disclosure of documents, at p. 7 of the Practice Direction. It reads: "The Magistrate have the discretion with regard to the release of documents. This discretion should in general be exercised in favour of release."

[7] Here from the wordings, the general rule: is to release (which as per the heading will mean "disclosure") the document; and not releasing the document will be an exception. That being so, any refusal to release (or disclose) must be justified with reasons for such a refusal.

(2) Section 51A Criminal Procedure Code

[8] This is a new provision that came into being by virtue of Amendment Act A 1274/06. This new provision is primarily of legislated to give effect to the changing trend in the administration criminal justice for pre-trial discovery. On this issue parties in today's application took different stands and views.

[9] In my opinion, s. 51A Criminal Procedure Code cannot be read in isolation but it has got to be read together with the proceeding section, namely s. 51 of the Criminal Procedure Code. If one were to read s. 51 Criminal Procedure Code, it is clear in the wordings ... "production of property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under this Code ..." It therefore encompasses an "enquiry" or inquest. Eventhough s. 51A Criminal Procedure Code speaks of "the trial" it should not be limited to trials only.

[10] After all, an inquest is inquisitorial in nature as compared to a trial, which is adversarial in nature. If in an adversarial proceeding pre-trial discovery is allowed, there is no reason not to allow such discovery in an inquisitorial proceeding. In an inquisitorial proceeding, such as an inquest, there is no question of prejudice or embarrassment. Not to allow will be prejudicial to the right to know the truth. After all we are living in an era of transparency.

[11] With the coming into force of the provisions in the new s. 51A Criminal Procedure Code, cases relating to disclosure of information and documents, which were decided before this, ie, before the implementation of the said pre-trial discovery provisions, such as *Mohammed bin Musa v. DPP* [1971] 1 LNS 86 and *PP v. Raymond Chia Kim Chwee & Anor & Another Case* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 will no longer be relevant.

[12] And furthermore Magistrates do have the power to order discovery of facts or document by any party or person. This is provided for under the provision of further powers as can be seen in s. 99A of the Subordinate Courts Act 1948 which is amplified in para 7 of the 3rd Schedule of the said Act.

[13] In conclusion, allowing disclosure of the post-mortem report of the deceased to counsel representing the husband of the deceased either before or during the inquest is well within and in accordance to the provisions of the law.

[14] As such, this court gave order in terms in respect of the prayers in the motion (KM2) but with a varying order that it shall be limited to the post-mortem of the deceased only. Consequentially it is ordered that the respondent do supply the said post-mortem report to the applicant forthwith.